interest finding that such connection would not be in the public interest.[249] BellSouth suggests, however, that the Commission permit ratcheting of switched services subject to existing bundled switched access rates, plus a transitional switched access connection subelement to apply to interconnectors.[250]

107. MFS argues that the Commission need not prohibit interconnectors from entering the switched market pending completion of the switched access expanded interconnection proceeding because there is no way an interconnector could obtain access to switched traffic without paying LEC transport charges. Therefore, according to MFS, CAPs would have no incentive to purchase switched services and resell them to an IXC. Even if interconnectors did so, MFS argues that the LECs would continue to recover the same amount of revenue.[251] MFS contends that if the Commission chooses to restrict CAP ratcheting or carriage of switched traffic, it must place the same restrictions on the LECs in order to prevent unfair competition.[252]

108. Discussion. In the initial Notice, we stated our intention to go forward with expanded interconnection for special access service while studying the desirability of such arrangements for switched transport further before deciding whether to proceed. This decision was based on our conclusion that competition for the provision of switched transport raised questions concerning separations and transport rates, potentially affecting residential customers, that do not exist in the special access context. Additionally, the Commission recognized the significant competitive implications of allowing interconnectors to compete by offering flat-rated transport service while the LECs were required to charge on a per-minute basis.

109. Given the potential effect of CAP ratcheting on the market for switched transport, we do not believe at this time that interconnectors should be allowed to ratchet at a date significantly before the LECs have implemented a new transport rate structure. If interconnectors were allowed to ratchet, their customers could treat the interconnector facilities in the central office as a POP and thus qualify for switched transport service at

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249 BellSouth Comments at 16-18; BellSouth Reply Comments at 33 n.66; Rochester Comments at 30-32.

250 BellSouth Comments at 20-21.

251 MFS Reply Comments at 25. MFS concedes that the CAP customer would be able to avoid distance-sensitive switched transport charges. It points out that switched access customers could achieve the same result by locating a "closet POP" within the lowest rate band, however, and argues that the LECs could eliminate the incentive for customers to do this by reducing their transport mileage charges. Id. at 25 n.20.

252 Id. at 23-26. According to Pacific, only about 0.47 % of Pacific Bell's special access traffic is provided pursuant to "ratcheting" or shared use tariff provisions. Pacific Reply Comments at 12 n.19.

the initial lowest price rate band in the LEC transport tariff. These rates are distance sensitive and priced on a per minute basis. Thus, interconnectors would be substituting their facilities for those of the LEC in transporting the call to an IXC POP, presumably applying flat-rated pricing for the service as is done for special access. To the extent that LEC costs are recovered through distance sensitive rates, ratcheting effectively forces the LEC per minute charge to compete against the CAPs' flat rate charges, and forces the LEC to face the potential of losing significant amounts of revenue before transport rate restructuring occurs. In light of the benefits that customers realize through ratcheting, we do not believe that barring LEC ratcheting as advocated by MFS is in the public interest.

VII. PRICING AND RATE STRUCTURE

A. Overview

110. In this section of the Order, we address the pricing and rate structure issues associated with special access expanded interconnection. There are four major issues that must be resolved. First, we must consider the rate structure and level of the connection charges that interconnectors will pay LECs to cover the costs of virtual and physical collocation. Second, we must decide whether the LECs will be permitted to charge interconnectors a contribution element over and above the connection charges, and if so, how they are to calculate the amount of such an element. We must also answer a number of questions related to the tariffing of connection charge subelements. Finally, we must determine the extent to which the LECs will be permitted flexibility in setting their own special access rates in the face of increased competition.

111. The comments generally reveal two alternative models for resolving the special access expanded interconnection pricing and rate structure issues. The LECs advocate an approach involving minimal regulatory constraints on them. The CAPs support a very different approach that is much more advantageous to interconnectors.

112. The LECs argue that they should be allowed a substantial degree of freedom to determine prices and rate structures for the connection charges, contribution element, and their own special access services. The likely result would be relatively high connection charges, contribution element, or both. Their approach would also give the LECs broad flexibility to adjust the rates for their own services in response to competition.

113. According to the CAPs and certain other parties, the Commission should adopt regulatory ground rules that would actively promote competitive entry and market penetration by the CAPs. Under the CAP approach, the LECs would be required to establish relatively low connection charges and would not be allowed to impose a contribution charge. At the same time, the LECs' flexibility to price their own special access services would be very limited until competition has developed further.

114. The pricing measures we adopt represent an approach that

draws from both these alternatives. Our pricing rules are also carefully designed to ensure that regulation does not artificially distort the development of competition, undermining customer benefits. For example, non-cost-based restrictions on LEC responses to competition would create a pricing umbrella for the CAPs, potentially fostering uneconomic investment, and depriving customers of the benefits of LEC rate reductions. At the same time, excessive LEC connection or contribution charges would hinder the development of competition, depriving customers of the associated efficiency gains.

115. Under our approach, the LECs will be allowed to recover through the connection charges a reasonable share of overheads, as is the case with the prices for other communications services. Although no contribution charge will be permitted at this time, the LECs may file requests seeking Commission approval of a limited contribution charge targeted to recover specifically identified subsidies or non-cost-based allocations that they demonstrate are embedded in the rates for LEC special access services subject to competition. In addition, the LECs will be given some additional pricing flexibility to respond to competition. This pricing structure for expanded interconnection for special access is designed to foster economic efficiency by ensuring that affected parties' decisions regarding market entry and pricing reflect appropriate costs.[253]

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253 Over the past two decades, the Commission has removed regulatory barriers to entry, thereby fostering the development of competition in various markets, including the interexchange market. While interexchange competition has developed relatively slowly, there are significant differences between the conditions prevailing while interexchange competition was developing and those that exist in the special access and switched transport markets today. Taken together, these differences indicate that special access and switched transport competition could develop much more rapidly than interexchange competition did.

First, once CAPs are interconnected to the central offices that handle heavy traffic, they can gain a significant share of the access market by selling their services to the three largest IXCs. In contrast to this, the new IXCs (other common carriers, or OCCs) had to market their interexchange services to thousands of individual customers to capture the market shares they now hold. Second, unequal access hindered the development of interexchange competition for many years, undermining marketplace acceptance of OCC services. By contrast, the interconnection received by the CAPs, under either virtual or physical collocation, would be technically comparable to that used by the LECs. Finally, it is not clear that access traffic will grow rapidly enough to offset LEC traffic losses to the new entrants. In the case of interexchange competition, the growth of interstate toll traffic was stimulated substantially by the access charge reductions accompanying implementation of SLCs and separations changes.

B. Connection Charges

1. Rate Structure

116. Notice. We tentatively concluded that the Commission should adopt new rate structure requirements in order to accommodate expanded interconnection. Accordingly, we sought comment on two rate structure options for virtual collocation.[254] Under one alternative, new connection charges would be designed for interconnectors, who would also pay for special central office features such as specially designated electronic equipment dedicated to their use. LEC special access customers would continue to pay existing channel termination rates. Under the other alternative, the current channel termination charge would be unbundled into two separate charges: a transmission charge paid only by LEC special access customers, and a connection charge paid by both LEC special access customers and interconnectors. The connection charge would recover the LECs' cost of transmission from the central office to the interconnection point, as well as the use of central office features. We also invited comment on the application of these alternative rate structures to physical collocation, noting that different costs would be included in an unbundled connection charge for physical collocation because interconnector use of LEC facilities differs under physical and virtual collocation.[255]

117. Comments. The parties are divided in their support for the two options. Some suggest variations on the two alternatives proposed by the Commission. Ameritech, SW Bell, Teleport, MFS, ICC, MCI, CompTel, Ad Hoc, and ICA favor creating new connection charges.[256] They say that the unbundling alternative would be burdensome, confusing and disruptive to the majority of special access customers and would benefit only a few parties. MFS asserts that the unbundling alternative is unworkable and unnecessary, and that it would be difficult to create pricing parity between physical and virtual collocation under the unbundling option. Several CAPs also argue that the unbundling approach would treat them as customers rather than co-carriers.[257] Teleport contends that the charges for interconnection facilities should not be dependent on the amount of CAP traffic provided over the facility.[258] Some CAPs and users state that the unbundling option would

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254 Notice, 6 FCC Rcd at 3265, ¶¶ 37-40.

255 Id., ¶ 41.

256 Ameritech Comments at 59-61; Ameritech Reply Comments at 45; SW Bell Comments, App. C at 1-3; Teleport Comments at 16-19; MFS Comments at 79-82; ICC Comments at 14; ICA Comments at 10-13; MCI Comments at 22-25; CompTel Comments at 18-19; Ad Hoc Comments at 28-29.

257 Teleport Comments at 12; MFS Comments at 80-81; FMR Comments at 12-13.

258 Teleport Comments at 15, 17.

not be appropriate for physical collocation.[259] The CAPs generally emphasize that the rate structure chosen should ensure that the connections LECs provide to interconnectors are economically comparable to those they provide for themselves.[260]

118. Supporters of the unbundling proposal include NYNEX, Centel, SNET, AT&T, the Bankers, GSA, SBA, and Justice.[261] These parties argue that unbundling would facilitate competition between LECs and CAPs for the transmission element, since LEC special access customers and CAPs would pay the same connection element. AT&T and Justice both argue that the unbundled alternative would help eliminate the inefficiencies and cross-subsidies built into the current rate structure, facilitate cost-based pricing of each element, prevent discrimination, and be consistent with the recent unbundling of ONA elements.[262] Some of the smaller CAPs and a number of state commissions also support the unbundling option.[263] NTIA supports allowing the LECs to experiment with either rate structure, although it favors unbundling.[264]

119. USTA, GTE, and Rochester argue that the Commission should not impose a specific rate structure and urge the Commission to let the LECs determine which rate structure to implement.[265]

120. Discussion. Expanded interconnection will benefit customers by allowing them to buy only the LEC central office connections that they need and to purchase other services (such as transmission) from third parties or provide these services themselves. Accordingly, either proposed rate

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259 Teleport Comments at 17 (unbundling existing special access rates would not work for physical collocation because connection charges should not be dependent on the amount of CAP traffic provided over interconnected facilities); Bankers Comments at 16-17 (unbundling option would not reflect LEC cost savings associated with not providing equipment under physical collocation).

260 See, e.g., Teleport Comments at 8.

261 NYNEX Comments at 24-25; Centel Comments at 7-8; SNET Comments at 17-18 (but favoring new connection charges if expanded interconnection rights limited to CAPs); AT&T Comments at 8-11; Bankers Comments at 15-16 (supporting unbundling for virtual collocation only); GSA Comments at 13-15; SBA Comments at 26-28; Justice Reply Comments at 45-49.

262 AT&T Comments at 9-10; Justice Reply Comments at 46-48.

263 See, e.g., Teleport Denver Comments at 10; Florida Comments at 11; Illinois Comments at 11; Michigan Comments at 8; D.C. Comments at 2.

264 NTIA Reply Comments at 16.

265 USTA Comments at 47; USTA Reply Comments at 31-34; GTE Comments at 37-39; Rochester Reply Comments at 15.

structure for expanded interconnection would effectively unbundle LEC transmission facilities from LEC central office connections. Formally dividing the special access rate structure into separate transmission and connection charges, as proposed in the Notice, however, would not be appropriate for most service elements covered by connection charges, because the services provided to interconnectors will not entirely parallel the services provided to LEC special access customers.[266] Formal unbundling is also inconsistent with our decision to permit individually negotiated tariff provisions for certain elements of the connection charges.[267] Accordingly, we will require that the LECs implement expanded interconnection by creating new connection charge elements for services they provide to interconnectors, rather than through formal unbundling of the special access rate structure into separate transmission and connection charges.[268]

121. The LECs' connection charges will cover a number of different functions and equipment. Thus, the LECs should tariff a number of different connection charge subelements. We conclude that, at least initially, we should not impose a detailed rate structure on the LECs. Rather, we will allow the LECs to establish reasonable disaggregated subelements for the connection charges, except that we will require the LECs to establish a cross-connect element that applies uniformly to both physical and virtual collocation.[269] This flexibility will enable them to tailor their connection charge rate structures to reflect their physical collocation offering, or any virtual collocation arrangements they negotiate with interconnectors. It will also permit the LECs to make their interstate connection charge rate structure consistent with their intrastate expanded interconnection rate structures. At least during the initial implementation period, we believe that the benefits of this flexibility outweigh the

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266 For example, under physical collocation, interconnectors will rent floor space in LEC offices.

267 See infra ¶ 159.

268 We will not require unbundling of the cross-connect element from existing LEC special access rates, even though the cross-connect service that LECs provide to interconnectors and to LEC special access customers is identical, because the apparently small magnitude of this charge does not justify the administrative burdens of such unbundling. For example, New York Telephone's intrastate cross-connect charge is $3.51 per month for a DS1. We will, however, require unbundling of any contribution charge that may be imposed in the future from existing special access channel termination rates, with the contribution charge applying to both LEC special access customers and interconnectors. We believe that unbundling any contribution charge is necessary to facilitate even-handed application of such a charge to both interconnectors and LEC special access customers. See infra ¶¶ 143-49.

269 We conclude, however, that the magnitude of connection charges should not be based on the number or type of interconnected circuits a subscriber has, unless the cost of providing service depends upon the number or type of interconnected circuits.

drawbacks of a non-uniform connection charge rate structure.

2. Initial Rate Levels of Connection Charges

122. Notice. We stated that in a price cap environment, review of initial rates based on costs may remain appropriate when, as in expanded interconnection, we make fundamental changes in the access charge structure to remove barriers to competition. We tentatively concluded that the initial rates for the new service elements to be paid by interconnecting parties should be reviewed not only under the price cap rules, but also pursuant to additional standards. In particular, we tentatively concluded that the price cap LECs should be required to justify their initial rates for connection charges and special central office services, to describe how they determined the direct costs of providing such services, and to explain the overhead loadings used in rate development. We stated that the same level of scrutiny should apply to both new and restructured services. Finally, we sought comment on whether proposed rates should be required to meet the net revenue test.[270]

123. Comments. Most of the LECs argue that the existing price cap rules are adequate for review of connection charges paid by interconnectors.[271] Some of the LECs and Dr. Alfred Kahn, testifying on their behalf, generally argue that connection charges should be priced at the LEC's incremental cost of providing interconnection plus a contribution calculated by subtracting the incremental costs of special access and interconnection services from the LEC's total revenues from those services.[272] Ameritech opposes any requirement that LECs provide fully distributed cost support for initial rates and subsequent rate changes, but argues that, under such an approach, a rate of return greater than 11.25% could be appropriate because expanded interconnection would greatly increase the LECs' business risk.[273]

124. GTE, SW Bell and Rochester generally support application of the net revenue test, which would require that they set rates for new services at levels high enough to avoid reductions in net revenues. They argue that an adequate level of contribution to general overheads would be guaranteed if the connection charges pass the net revenue test.[274] A number of other LECs oppose application of the net revenue test, although they

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270 Notice, 6 FCC Rcd at 3266-68, ¶¶ 47-55.

271 See, e.g., U S West Comments at 25-29; BellSouth Comments at 67-70; SW Bell Comments, App. C at 4-5; Rochester Comments at 25-26; USTA Comments at 55.

272 See, e.g., Pacific Comments at 51; Bell Atlantic Comments at A-13-14; Kahn Affidavit at 16, 18.

273 Ameritech Reply Comments at 52-53, 61-63.

274 GTE Comments at 39-44; SW Bell Comments, App. C at 5-7; SW Bell Reply Comments at 66-70; Rochester Comments at 25-26; USTA Comments at 52-53.

generally seek a high contribution element that would have an effect similar to connection charges meeting the net revenue test.[275]

125. The CAPs, IXCs, and users generally argue that the Commission should require the LECs to base their initial connection charge rates on demonstrated costs.[276] Several of these parties argue that the LEC prices for these services should reflect direct or incremental costs, without company-wide overhead allocations. Teleport Denver proposes that the Commission require full cost support data under Section 61.38 of our Rules for the initial filings.[277] MCI suggests the use of "Total Service--Long Run Incremental Costs," which includes some fixed costs, and proposes that the same 11.25% cost of capital used for pricing other services be used for pricing expanded interconnection, arguing that there is no justification for a risk premium when providing a bottleneck facility to competitors.[278] Ad Hoc proposes that LECs be required to provide central office space and related services to physically collocated interconnectors at the same rate the LECs would charge their unregulated affiliates for such space and services under their cost allocation manual treatment of affiliate transactions.[279] D.C. states that connection charges should be justified based on direct and overhead costs.[280] FMR, a CAP investor and customer, specifically argues that competition cannot develop if CAPs must pay retail prices for LEC services.[281] The CAPs oppose application of the net revenue test, asserting that it would result in connection charges high enough to stifle competition.[282]

126. A number of parties also advance proposals for pricing parity between connection charges for virtual and physical collocation. For example, Centel, Florida and Michigan propose pooling the cost of providing connections for virtual and physical collocation, and establishing an

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275 See, e.g., NYNEX Comments at 50-51; Bell Atlantic Comments at A-15-16; Pacific Comments at 48-50; SNET Comments at 21-22.

276 See, e.g., MFS Comments at 103-07; Locate Comments at 31-32; FMR Reply Comments at 13-14; Allnet Comments at 7; MCI Comments at 26; Ad Hoc Comments at 32-33; CompuServe Comments at 8-9; EDS Comments at 4-5; GSA Comments at 19; ICA Comments at 19.

277 Teleport Denver Comments at 12-13.

278 MCI Comments at 26; MCI Reply Comments at 52.

279 Ad Hoc Comments at 31.

280 D.C. Comments at 4.

281 FMR Reply Comments at 13-14.

282 See, e.g., MFS Comments at 102-03.

averaged connection charge rate for both types of interconnection.[283] Teleport argues that LEC charges for virtual collocation should be economically comparable to the costs that a CAP would incur under physical collocation.[284] MFS argues that to make virtual collocation as close an approximation of physical collocation as possible, the Commission should require that the same rate elements apply to both forms of interconnection. It argues that under virtual collocation, interconnectors should pay phantom or surrogate space occupancy charges, even though they would not actually occupy central office space, as well as the same connection charges applicable to physically collocated parties.[285] Locate argues that wage rates for maintenance and repair activities performed by the LECs should be priced to reflect CAP labor rates to preclude the LEC from earning undue profits.[286] The Bankers submit that the rate structure adopted should create pricing parity between the LECs and their competitors, and should ensure that LECs, not interconnectors, bear any reasonable costs associated with virtual collocation that would not be incurred if physical collocation were available.[287] Ad Hoc proposes different connection charges for virtual and physical collocation but overall pricing parity between the two types of collocation, lower rates for interconnectors that supply their own equipment, and a supplemental charge for virtual collocation customers that interconnect beyond the prescribed distance.[288]

127. Discussion. Given the fundamental nature of this restructuring of special access service and the importance of the connection charge rate levels to the development of economically sound competition benefiting customers, we conclude that the connection charge rate levels should receive the same scrutiny regardless of whether the rate changes would qualify as a rate restructure or a new service under the price cap rules.[289] In particular, we will require the LECs to develop and justify consistent methodologies for deriving the direct cost of providing similar types of new offerings, including expanded interconnection services covered by the

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283 Centel Comments at 8-9; Florida Comments at 13; Michigan Comments at 9.

284 Teleport Comments at 8, 31.

285 MFS Comments at 76-77.

286 Locate Comments at 37-38.

287 Bankers Comments at 15-16.

288 Ad Hoc Comments at 29.

289 For the reasons set out below in our discussion of the net revenue test, see infra ¶ 129, however, the revenue neutrality test usually applied to restructured, unbundled basic serving elements (BSEs) will not apply to connection charges in the expanded interconnection context.

connection charge rate elements.[290]

128. We will also require the LECs to justify any deviations from uniform overhead loadings that they propose for pricing connection charges, although we will not specify a particular methodology in advance.[291] Under this approach, if a LEC proposes to price connection charges to reflect fully distributed overhead loadings, we will compare such loadings to the overhead loadings used for other services and require justification for any differences in overhead loadings. The requirement that the LECs use a consistent direct cost methodology and justify any deviations from uniform overhead loadings in the tariff review process will give affected parties substantial protection, while according the LECs some flexibility in setting the initial rate levels for connection charge subelements.[292]

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290 Different direct costing methodologies could be used for different types of new offerings when justified by the LEC. This requirement reflects our policy for the pricing of new services adopted in the LEC Price Cap proceeding. Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 6 FCC Rcd 4524, 4531 (1991). Certain aspects of the new services test are not applicable in the context of expanded interconnection, however. For example, a risk premium would be inappropriate with respect to connection charges, since provision of expanded interconnection does not involve risky investment and technological research and development by the LECs. Similarly, we conclude that the pricing test applicable to new versions of existing services does not apply to connection charges for expanded interconnection. Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 7 FCC Rcd 5235, 5236-37 (1992).

291 Contrary to the arguments of certain parties, we believe that it would not be reasonable to require the LECs to base their connection charges only on the direct costs of these services, with no loadings for overhead costs. Direct-cost-based pricing of connection charges, which would make these charges one of the few, if any, LEC offerings not recovering overheads, would either require all other LEC services to recover a proportionally greater share of such costs or require the LECs to forgo revenues. Moreover, the low charges for interconnection with LEC facilities resulting from this approach would give interconnectors false economic signals that could stimulate uneconomic entry into the access market.

292 Because expanded interconnection is a basic service offering, we decline to set the level of connection charges using the cost allocation methods that apply to transactions with unregulated affiliates. We believe that the approach we are adopting is more fully consistent with Commission precedent and will more effectively address concerns about discrimination and anti-competitive pricing. Nor is there a need to establish a fully distributed cost pricing floor for the connection charges in order to protect other ratepayers. The LECs have ample incentives to avoid underpricing the connection charges.

129. We also conclude that we should not require that connection charges meet the net revenue test.[293] Setting new service prices to satisfy the net revenue test would produce prices targeted to ensure that the carrier will not lose revenues through the offering of the new service over an extended period of time. This standard is inconsistent with a regulatorily mandated new service designed to subject LECs to the rigors of increased competition.[294] The main risk here is that LECs will seek to overprice the services used by competitors in order to deter entry. The net revenue test would not only fail to protect against this, but would tend to produce connection charges that substantially exceed the cost of providing expanded interconnection, undermining competition in the special access market.[295]

130. Finally, we decline to require that LECs set connection charges to ensure that interconnectors using virtual and physical collocation arrangements pay the same total prices. The services, equipment, and facilities LECs provide under virtual and physical collocation differ, as do the functions that the interconnector performs for itself.[296] We believe that the initial connection charges for both virtual and physical collocation should reflect the costs of the services that the LEC actually provides.[297]

131. We also reject the contentions that services provided by the LECs under physical or virtual collocation must be priced based on interconnectors' wage rates, rather than those of the LECs. To the extent that the LECs have higher wage rates, such a requirement could force the LECs to

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293 We recently concluded that the cost support requirements for new services made the net revenue test superfluous as a check on predatory pricing and decided no longer to require it for new LEC services in general. Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, 7 FCC Rcd 5235, 5237 (1992).

294 Indeed, inherent in the concept of competition is the potential loss of revenues by a competitor.

295 In fact, in this case, the net revenue test would function like a very high contribution element designed to recover lost contributions to LEC overheads -- a result that we reject in the section of this Order addressing the contribution element. See infra ¶ 144.

296 For example, the construction work necessary to prepare a central office for physical collocation typically would be greater than that required to provide virtual collocation. Also, under physical collocation, interconnectors use more central office floor space than is the case under virtual collocation. Under virtual collocation, however, the LEC performs installation, maintenance, and repair functions that the interconnector performs for itself under physical collocation.

297 Contrary to the concerns of certain parties about the pricing of virtual collocation, we emphasize that under our rules, neither virtual nor physical collocation would be priced as a discounted form of special access.

provide expanded interconnection services at a loss. We believe that the LECs are entitled to charge for those services based on their own wage rates. While this may result in higher charges for maintenance and repair under virtual collocation, we do not believe that this difference warrants mandatory use of interconnector wage rates for virtual collocation, particularly given that physical collocation will generally be available as an alternative and other charges, such as those for central office space usage, will lead to comparatively higher charges under physical collocation.[298]

3. Subsequent Rate Changes

132. Notice. We proposed amending the price cap rules to create a new, separate subindex consisting of connection charges and special central office charges for services used by interconnecting parties. We proposed to limit pricing flexibility for this service group to annual increases of 2% relative to the percentage change in the price cap index for the special access service basket.[299] We also sought comment on appropriate pricing standards for LECs subject to rate of return regulation.[300]

133. Comments. Most of the LECs generally oppose the proposal in the Notice, arguing that the existing protections in the price cap regime will be sufficient and that additional restrictions on price changes would be unnecessary and counterproductive.[301] They assert that 2% would be too narrow a banding limit, and that the Commission should follow its general determination in the price cap rules that a 5% band is adequate.[302]

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298 The requests by certain LECs for authorization of increased earnings levels in recognition of increased market risk flowing from expanded interconnection are beyond the scope of this proceeding.

299 Under this proposal, the connection and special central office service charges would also continue to be included in the four existing special access service groupings -- (1) voice grade, WATS, metallic and telegraph; (2) audio and video; (3) high capacity and digital data services; and (4) wideband data and wideband analog -- for purposes of applying the 5% banding restrictions applicable to those groupings. See Notice, 6 FCC Rcd at 3268, ¶¶ 57-60.

300 Id. at 3269, ¶¶ 61-63.

301 See, e.g., U S West Comments at 29-30; NYNEX Comments at 52-53; Ameritech Comments at 66-67; GTE Comments at 44-46; USTA Comments at 63.

302 See, e.g., BellSouth Comments at 70-71; GTE Comments at 44-45; United Comments at 15; USTA Comments at 60-63; SW Bell Reply Comments at 73; Ameritech Reply Comments at 48-50.

134. On the other hand, a number of CAPs and users support the 2% ceiling proposed in the Notice for the connection charge subindex.[303] MFS proposes an even narrower pricing limit: a cumulative maximum 2% increase over any three year period.[304] Several state commissions, such as D.C. and Michigan, and the SBA argue that the connection charge should not be subject to change under the price cap rules, with subsequent changes in the connection charge scrutinized under the same standard as the initial rates.[305] NTIA opposes the narrower 2% ceiling.[306] Justice supports additional scrutiny of subsequent changes in the connection charges due to the potential for anti-competitive pricing.[307]

135. Lincoln, a Tier 1 LEC under rate of return regulation, argues that existing rules for rate of return carriers provide adequate guidelines for rate justification, and that no new rules are necessary for these LECs.[308] Several commenters, however, express concern about review of subsequent rate changes by rate of return LECs to prevent discrimination or cross-subsidization. GSA suggests a requirement that transmission and connection charges be separately targeted to achieve their authorized rate of return,[309] while MFS argues that any change in the relative overhead loadings applicable to connection charges, central office services, channel terminations and channel mileage should trigger an investigation, absent compelling justification.[310]

136. Discussion. As discussed in detail elsewhere in this Order, we are permitting the LECs and interconnectors significant ability to negotiate some details of their virtual collocation arrangements, which would then be tariffed. Thus, different interconnectors may use different types of central office equipment under virtual collocation and structure the financial arrangements for this equipment differently. Space preparation necessary for physical collocation may also vary significantly.[311] Because this treatment will produce rate level differences that could easily distort

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303 See, e.g., ICC Comments at 15-16; Teleport Denver Comments at 13; Ad Hoc Comments at 33.

304 MFS Comments at 109-10.

305 SBA Comments at 31; D.C. Comments at 3-4; Michigan Comments at 14-15.

306 NTIA Reply Comments at 18-19.

307 Justice Reply Comments at 52-53.

308 Lincoln Comments at 11-12. See also USTA Comments at 54-55.

309 GSA Comments at 20.

310 MFS Comments at 111.

311 See supra ¶ 40, infra ¶¶ 158-59.

the results of price cap review, at least during the initial phases of expanded interconnection, we will not impose a separate price cap subindex with a 2% ceiling on rate increases for connection charges as proposed in the Notice. Under the original price cap rules, AT&T excluded special construction services and custom tariff services from price cap baskets because such services were not amenable to price cap treatment and because traditional regulatory procedures appeared to better protect consumers with respect to such services.[312] For similar reasons, we now designate expanded interconnection services covered by connection charges as services that are excluded from the LECs' price cap baskets.[313] We will apply non-streamlined tariff review standards to connection charges.[314] After the initial implementation phase, connection charges may be sufficiently uniform to permit price cap treatment.

137. We also conclude that the existing tariff review standards and procedures are adequate to prevent discrimination or cross-subsidization by rate of return LECs. Accordingly, we do not adopt additional requirements to govern subsequent changes in connection charges by rate of return LECs. We will also require that revenue from connection charges be included in the special access service category to measure earnings for purposes of determining compliance with the maximum allowable rate of return.[315]

C. Contribution Charge

138. Notice. While uncertain of the need for a contribution element, we requested comment on whether such a charge is necessary to alleviate any LEC hardship caused by changes resulting from expanded interconnection.[316] We stated that LECs would have to justify the initial level of any contribution charge, and proposed that changes to such charges be permitted only through further order or a prescribed formula, and not under the price cap mechanism.[317]

139. Comments. The LECs support a substantial contribution charge to help recover costs associated with geographic averaging, cross-subsidies

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312 Policy and Rules Concerning Rates for Dominant Carriers, 4 FCC Rcd 2873, 3033-37 (1989) (AT&T Price Cap Order), pets. for rev. pending sub nom. AT&T v. FCC, No. 91-1178 (D.C. Cir., filed Apr. 16, 1991); 47 C.F.R. § 61.42(c)(1)-(4).

313 See 47 C.F.R. § 61.42(f).

314 The considerations which led us subsequently to streamline AT&T Tariff 12 offerings, see Interexchange Order, 6 FCC Rcd at 5893-96, 5902, are not applicable here.

315 See 47 C.F.R. § 65.702.

316 Notice, 6 FCC Rcd at 3265-66, ¶ 43.

317 Id. at 3267-68, ¶¶ 53, 58.

built into the separations and Part 69 rules, and the embedded cost of plant purchased to meet "carrier of last resort" obligations.[318] Several LECs included with their comments an affidavit by Dr. Alfred Kahn, who advocates a contribution charge generally equivalent to the revenues from the LECs' special access and interconnection services minus the incremental cost of providing these services, reduced to a per unit basis.[319] Some LECs argue that contribution need not be paid through a separate rate element, but should instead be recovered by including sufficient overheads in other rates.[320] These LECs argue that, in any event, the sum of connection and contribution charges should satisfy the net revenue test. Cincinnati Bell proposes a surcharge on interconnectors to recover costs for stranded investment due to bypass of the LEC network, among other things.[321]

140. Several LECs state that a contribution element could be transitional, being phased out as cross-subsidies are eliminated and rates aligned with cost.[322] NYNEX asserts that if the LECs are permitted to deaverage rates and to price in competitive areas closer to incremental costs, the loss in demand for LEC services would be less and the contribution element could be smaller.[323] SW Bell concedes that only a portion of the contribution lost due to increased competition can be recovered through charges related to expanded interconnection, and suggests alternative means of recovering the lost revenues.[324] Some LECs argue that failure to provide

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318 See, e.g., Ameritech Reply Comments at 40-44; Bell Atlantic Comments at 11-13; BellSouth Comments at 71-76; BellSouth Reply Comments at 26-28; Pacific Comments at 62-63; Pacific Reply Comments at 58-65; SW Bell Comments, App. E at 5-10; SW Bell Reply Comments at 21-29 & App. A at 32-35; Centel Comments at 4-6; Cincinnati Bell Comments at 3-5; Cincinnati Bell Reply Comments at 14-16; USTA Reply Comments at 17-23.

319 See, e.g., Kahn Affidavit at 16, 18. See also Bell Atlantic Comments at A-13-14; BellSouth Comments at 74-75; Pacific Comments at 57-60.

320 GTE Comments at 43-44; USTA Comments at 52. Bell Atlantic and Dr. Alfred Kahn support applying the contribution charge to LECs as well as interconnectors, but argue that where a competitor threatens to completely bypass the LEC network, the LEC should be free to exclude the contribution element from the price of its own retail services to that customer. Bell Atlantic Comments at 13 n.31; Kahn Affidavit at 18.

321 Cincinnati Bell Comments at 5.

322 See, e.g., Ameritech Reply Comments at 42; BellSouth Reply Comments at 27-28; Cincinnati Bell Reply Comments at 4 n.6; SNET Comments at 19.

323 NYNEX Comments at 34-35.

324 SW Bell Comments at E-16-17. It suggests some potential vehicles for contribution recovery, including increases in the End User Common Line, a surcharge on all or selected remaining services, and a deaveraged rate

for a contribution element would constitute confiscation.[325]

141. NTCA proposes that cost flows to non-Tier 1 carriers that provide access services jointly with neighboring Tier 1 LECs should be considered in the design of a contribution element and the level of the charge.[326] Some state commissions assert that the LECs should be allowed to use a contribution charge to recover embedded costs or overheads that they cannot recover in a competitive environment.[327] D.C. also suggests including in the contribution charge accelerated depreciation of plant made obsolete by the new competition.[328]

142. Most of the other parties, including CAPs, IXCs, large users, NTIA, and Justice, argue that the Commission should not authorize a contribution charge for special access or that such a charge should be as small as possible.[329] These parties generally contend that a contribution charge for special access would help perpetuate non-economic rates, depress the use of interconnection, and unfairly insulate LECs against competitive losses, undermining incentives for increased LEC efficiency. A number of the parties opposing a contribution charge argue that given recent decreases in special access rates and existing volume discounts, special access includes little or no support for other services. Some of these parties contend that before the Commission orders creation of a contribution element, the LECs

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structure which embodies the cost/rate relationship principles discussed in the ONA proceeding.

325 See, e.g., SW Bell Comments, App. E at 10-12; BellSouth Comments at 76.

326 NTCA Comments at 3; NTCA Reply Comments at 10-13; TDS Reply Comments at 31.

327 See, e.g., California Comments at 7; D.C. Reply Comments at 5-6. See also Florida Comments at 11-12 (arguing for contribution to be included in connection charges, not broken out as separate element); Pennsylvania Consumer Advocate Comments at 2 (arguing for contribution element to eliminate any impacts on basic service rates, particularly in high-cost areas).

328 D.C. Reply Comments at 5.

329 See, e.g., Teleport Comments at 46-47; MFS Comments at 82-86; FMR Comments at 18; Locate Comments at 32; ICC Comments at 16; ALTS Comments at 27-29; MFS Reply Comments at 71-78; Teleport Reply Comments at 10-12; FMR Reply Comments at 20-24; Teleport Denver Reply Comments at 12; AT&T Comments at 11-12; AT&T Reply Comments at 10-12; MCI Comments at 27; Sprint Comments at 12-13; MidAmerican Reply Comments at 7; WilTel Comments at 25; ICA Reply Comments at 11-17; Ad Hoc Comments at 30-31; Ad Hoc Reply Comments at 14-17; Bankers Reply Comments at 17-18; CompuServe Comments at 9; EDS Comments at 5; Intermedia Reply Comments at 2; GSA Comments at 16-19; SBA Comments at 30; NTIA Reply Comments at 19-21; Justice Reply Comments at 58-66.

should be required to demonstrate that expanded interconnection would cause a loss of contribution to other services. They also argue that revenue from any contribution element should be targeted to support specified public policy goals. The CAPs strenuously object to a contribution charge designed to recover LEC overhead costs.[330]

143. Discussion. As discussed in more detail below, we believe that all market participants should contribute to regulatorily mandated support flows reflected in the LECs' rates for services subject to competition. We are not permitting the implementation of a contribution charge absent further Commission action, however. Instead, we are proposing to eliminate the only support flow that appears to warrant a contribution charge based on the current record. We will, however, permit the LECs to seek approval of a contribution charge based on other support flows.[331]

144. At the outset, we reject the method for developing a contribution charge proposed by many of the LECs and Dr. Kahn, who advocate allowing the LECs to recover a contribution amount generally equivalent to their special access and interconnection revenues minus their incremental cost of providing these services. This approach would force interconnectors to bear a significant portion of LEC overheads and would tend to result in an unduly high contribution element, unreasonably discouraging the use of expanded interconnection. Ultimately, such an approach would reduce the consumer benefits of competition as an incentive for improved LEC efficiency and innovation. We are therefore rejecting this proposed method for calculating the contribution charge.[332] A contribution charge designed to satisfy a net revenue test would assure that the LECs continue to recover the same amount of revenue after the implementation of expanded interconnection as before, and would also be objectionable for the reasons cited above.

145. On the other hand, the LECs' rates for various access services may reflect certain regulatorily mandated support mechanisms designed to achieve social policy objectives. In a competitive environment, we believe that all market participants must be required to share the cost of such support mechanisms. While an excessive contribution charge would suppress demand for expanded interconnection and dampen the LECs' incentives to improve efficiency and lower prices in response to competition, imposing support burdens only on the LECs would also distort the competitive marketplace by forcing the LECs to charge rates in excess of their cost of

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330 See, e.g., MFS Reply Comments at 78; Teleport Reply Comments at 10-12; FMR Reply Comments at 21.

331 Upon Commission approval of its request, the LEC could revise its tariffs to include a contribution charge to reflect the specified support flows.

332 The price cap system and other Commission rules give the LECs an adequate opportunity to recover general overhead revenues lost when customers take service from an interconnector. We therefore reject the argument that failure to provide for a contribution element constitutes confiscation.

providing the service. Accordingly, we reject the argument that the LECs should not, under any circumstances, be allowed to include a contribution charge in their expanded interconnection tariffs.

146. We believe that any contribution charge in LEC expanded interconnection tariffs should be targeted to recover only specifically identified regulatory support mechanisms or non-cost-based allocations that are embedded in LEC rates for special access services subject to competition. This would ensure a fair distribution among all market participants of the responsibility for support flows currently imposed by our regulations, while minimizing market disruption.[333]

147. Based on the present record, the only significant non-cost-based support flow imposed by our regulations affecting special access is the over-allocation of General Support Facilities (GSF) costs to special access. This results from the Part 69 requirement that the LECs exclude subscriber loop investment when allocating GSF overhead costs among access categories.[334] That requirement causes substantial under-allocations of costs to the common line category and over-allocations to other categories, including both special access and switched transport. Several LECs submit that revising that rule would reduce their annual interstate revenue requirements for both special access and switched transport by substantial amounts.[335] The LECs have not shown that any other regulatorily-imposed support flows significantly affect their special access revenue requirements.[336] Accordingly, we will not allow the LECs to include amounts

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333 Any such charge would be structured as a separate rate element applying equally to interconnected circuits and similar LEC services. Moreover, any contribution charge should recover revenues no greater than the demonstrated regulatory support flows that the LEC currently recovers in the rates for services subject to competition. See infra note 412 for a definition of the services deemed subject to competition.

334 47 C.F.R. § 69.307 (excluding Category 1.3 Cable and Wire Facilities from apportionment of GSF investments). See also 47 C.F.R. § 36.154(a) (defining Category 1.3).

335 Ameritech Comments at 42 (rule change would decrease interstate special access revenue requirement by $28 million); Bell Atlantic Comments at 10 n.21 ($25 million decrease in interstate special access costs); NYNEX Comments, Exh. F at 6 ($31 million decrease in New York and Massachusetts); Pacific Comments at 27 n.32 ($20 million decrease for Pacific Bell); SW Bell Reply Comments, App. C at 14 ($23.4 million decrease); Cincinnati Bell Reply Comments at 17-18 ($1.6 million or $2.1 million decrease out of a total $19.5 million special access revenue requirement).

336 Some LECs argue that study-area-wide pricing and the averaging of the costs of different technologies constitute regulatorily-imposed support flows. We address these issues below in our discussion of geographic rate differentials. See infra ¶¶ 172-86. Similarly, some LECs assert that our depreciation policy results in non-cost-based allocations. The adequacy of

related to other possible support flows in a contribution charge absent further Commission action. LECs asserting that other support flows exist and seeking to reflect them in a contribution charge must obtain Commission approval prior to filing tariffs designed to implement such a charge.

148. Although in principle it would appear reasonable to allow the LECs to impose a contribution charge to recover GSF over-allocations, in practice such a policy raises several serious problems. First, it is very difficult to determine how much of the GSF support flows are included in rates for LEC services subject to competition -- i.e., DS1 and DS3 services. Most of the Tier 1 price cap LECs have substantially reduced their DS1 and DS3 rates in recent years, and it therefore appears likely that rates for such services recover significantly less GSF support amounts than do other special access services. The methodologies we have identified for determining how much GSF support is embedded in high capacity service rates appear to be inherently arbitrary. Given our general concerns about the competitive impact of contribution charges, we believe that instead of allowing a contribution charge, it would be far more desirable to revise the Part 69 rules to allocate GSF costs proportionally to all service categories. In a Notice of Proposed Rulemaking contained in this document, we therefore propose to revise Section 69.307 in this fashion, and seek comments on this issue.[337]

149. Accordingly, the LECs will not be allowed to include any contribution charge in their initial or subsequent expanded interconnection tariffs absent further Commission action. We reach this decision not because

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depreciation rates is beyond the scope of this proceeding. Moreover, other alleged over-allocations raised by the LECs primarily affect switched access categories and have no (or a de minimis) impact on special access. These include: the use of a frozen Subscriber Plant Factor (SPF) rather than actual Subscriber Line Usage (SLU) to allocate certain non-traffic sensitive loop plant costs; the allocation of tandem switching costs; the non-distance sensitive allocation of interexchange trunk circuit equipment; and contributions to long-term and transitional carrier common line support pools. Ameritech Reply Comments at 60-61; NYNEX Comments, Exh. F at 3-4 & 6-9; SW Bell Reply Comments, App. C at 12-13 & 15-16. The alleged over-allocation of marketing expense raised by Pacific is being addressed by the Joint Board, and the over-allocation of central office equipment alleged by Pacific is de minimis, and we are not convinced based on the present record that it is unreasonable. Pacific Comments at Exh. B. Finally, we lack sufficient information on the current record to determine whether subsidy flows in services provided jointly by Tier 1 and smaller LECs should be taken into account in designing any contribution charges, and we will therefore not permit inclusion of such alleged flows in contribution charges. See also Transport Order at n.178.

337 We also ask interested parties to propose specific methodologies for calculating a GSF contribution charge for use in the event that we do not ultimately adopt our proposal for reallocation of GSF costs. See infra ¶¶ 267-69.

we oppose contribution charges in principle. On the contrary, we believe that where support flows imposed by regulation can be demonstrated to affect the rates of LEC services subject to competition, similar support burdens should be imposed on interconnecting competitors. Rather, we reach this result because we propose to eliminate, in the very near future, the only substantial support flow that has been demonstrated in this proceeding.[338] Our proposal for amendment of the Part 69 rules governing the allocation of GSF costs is discussed in more detail below.[339]

D. Tariffing

150. Notice. We sought comment on the benefits and drawbacks of using general tariffs or individual contracts for charges for LEC central office space under physical collocation.[340] With respect to virtual collocation, we noted that interconnecting parties might wish to purchase the central office equipment that would be dedicated to their use and that tariffs for this central office electronic equipment could reflect the terms of individual contracts between LECs and interconnectors rather than generally available tariff rates.[341]

151. Comments. The LECs generally argue that charges for space usage for physical collocation should be governed by individually negotiated

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338 Given our intention to expeditiously consider revision of the current rule governing the allocation of GSF costs, there should be no more than a few months between the effective date of the LECs' interstate expanded interconnection tariffs and action on our proposal for the reallocation of GSF costs. The LEC tariffs implementing expanded interconnection will not become effective until approximately eight months after adoption of this Order, except in the case of LECs that already have intrastate expanded interconnection arrangements in effect and are required to implement interim tariffs. In light of this and the administrative difficulties associated with implementing a contribution charge, we believe that provision for an interim contribution charge is not necessary. In the case of price cap LECs, the low end adjustment procedures which permit rate increases if LEC earnings dip below a pre-determined level will provide adequate protection given the limited time period involved. If the Commission determines that GSF costs should not be reallocated to eliminate the current support flows, we would allow inclusion of GSF costs in a contribution charge to the extent that they are recovered through the charges for services subject to competition. See infra ¶¶ 267-69.

339 See infra ¶¶ 243-45.

340 Notice, 6 FCC Rcd at 3265, ¶ 42.

341 Id. at 3265, n.29.

contracts, not tariffs.[342] They contend that rates and terms would be complex and would have to be tailored for individual central offices. SW Bell and NYNEX propose that the standard connection charge be tariffed, but argue that given the diversity of central offices and customer requirements, the other, more variable aspects of both physical and virtual collocation should be subject to negotiated contracts, which the Commission could inspect to ensure non-discrimination.[343] A number of the LECs also assert that space rental is not a Title II communications common carrier service and therefore cannot be tariffed.[344] AT&T proposes that LECs charge interconnectors on an individual case basis for installation and maintenance of special equipment dedicated to interconnectors that the LECs do not ordinarily use.[345]

152. Most of the CAPs, non-dominant IXCs, and certain users urge the Commission to require that all services be offered under tariff, so as to ensure nondiscrimination.[346] Certain of them, however, request the flexibility to negotiate the terms and conditions of their arrangements with the LECs, arguing that negotiated arrangements would provide flexibility to accommodate varying central office configurations and equipment types.[347] The users generally assert that terms should be publicly disclosed and available on a nondiscriminatory basis.[348] CompTel argues that central office space is "incidental" to communications service and can be tariffed.[349]

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342 See, e.g., NYNEX Comments at 27-31; Bell Atlantic Comments at A-12-13; U S West Comments at 49-51; SW Bell Comments, App. C at 9-10; Centel Comments at 9-11; SNET Comments at 18-19; Cincinnati Bell Comments at 6-7; Lincoln Comments at 7-8; USTA Comments at 33-35; Rochester Reply Comments at 16-17.

343 See, e.g., SW Bell Reply Comments at 74-77; NYNEX Reply Comments at Exh. 2, Exh. 7.

344 See, e.g., NYNEX Comments at 28-29; Bell Atlantic Comments at A-12; U S West Comments at 49-51; SW Bell Comments at C-9-10; Centel Comments at 9-11; Cincinnati Bell Comments at 6-7.

345 AT&T Comments at 16.

346 See, e.g., MFS Comments at 73-75; Locate Comments at 28-29; Indiana Digital Access Comments at 9-10; Allnet Comments at 5; CompTel Comments at 15-17; CompTel Reply Comments at 18-20; MidAmerican Reply Comments at 7; Ad Hoc Comments at 30; UTC Comments at 10; ICA Reply Comments at 15; Ohio LINX Ex Parte at 1 (Sept. 8, 1992).

347 See, e.g., Teleport Denver Comments at 11; ICC Comments at 13-14; API Comments at 19-20; ICA Comments at 17-18.

348 See, e.g., Bankers Comments at 17-18.

349 CompTel Comments at 16-17.

153. The Illinois and Michigan commissions argue that to prevent discrimination, all arrangements negotiated between LECs and interconnectors should be made public and available for purchase by other interconnectors.[350] The Florida commission suggests that if interconnectors have the option of taking physical or virtual collocation, LEC-CAP negotiations and market forces would generate reasonable space allocations and rates, but argues for tariffed rates for power and other central office support services so as to avoid LEC discrimination against interconnectors.[351]

154. NTIA suggests that LECs and interconnectors be allowed to negotiate interconnection agreements on an individual case basis, but argues that such agreements should eventually be tariffed so that the Commission can ensure nondiscrimination.[352] Justice contends that the Commission should require tariffing of central office space as part of the connection charges. It argues that this would eliminate discrimination and clarify the Commission's jurisdiction over the provision of real estate for interconnection purposes. Justice states that this would not preclude LECs from setting different tariffed rates for each central office to reflect the varying market value of space.[353] SBA recommends that the LECs be required to file tariffs for space rental, but that interconnectors be permitted to negotiate off-tariff contracts with the LECs.[354]

155. Discussion. This proceeding involves two issues regarding how the LECs should tariff expanded interconnection offerings. The first question is whether the LECs should be required to offer such services through tariffs at generally available, averaged rates, or whether they should be permitted to provide these services pursuant to individually negotiated tariff provisions. The second question is whether central office space usage under physical collocation can be tariffed under the Communications Act.

156. General v. Individually Negotiated Tariffs. We recognize the need for flexibility in structuring certain elements of expanded interconnection tariffs to meet the individual needs of interconnectors and the conditions in different LEC central offices. At the same time, we recognize the need to protect interconnectors from discrimination by the LECs.

157. In light of the LECs' substantial market power over expanded interconnection offerings, and their incentive to set the terms and conditions of such offerings in a manner that is disadvantageous to inter-

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350 Illinois Comments at 8-9; Michigan Comments at 10, 12.

351 Florida Comments at 13-14.

352 NTIA Reply Comments at 10-12.

353 Justice Reply Comments at 39.

354 SBA Comments at 28-29.

connectors, we believe that tariffing requirements must be established to prevent anticompetitive pricing and discrimination. Accordingly, the LECs are to tariff general terms and conditions applicable to their physical collocation and to their virtual collocation expanded interconnection offerings.[355] We will require that the LECs provide the following expanded interconnection elements pursuant to generally available tariffs at study-area-wide averaged rates under both physical and virtual collocation: (1) the cross-connect element, which covers the short cable connection from the LEC distribution frame to the central office electronic equipment owned by or dedicated to the interconnector; and (2) any contribution charge that may be permitted in the future. Since these elements will be fairly standard, we see no need for the greater flexibility possible with use of individually negotiated tariff provisions.

158. We also conclude, with respect to certain other connection charge elements, that charges may reasonably differ by central office due to variations in costs, but should be uniform for all interconnectors in each individual central office. These elements include: (1) charges for central office space usage under physical collocation, which must be tariffed at a uniform charge per square foot (or other unit) of space for all interconnectors in any given central office; (2) labor and materials charges for initial preparation of central office space under physical collocation and for installation, repair, and maintenance of central office electronic equipment dedicated to interconnectors under virtual collocation;[356] and (3) other charges that reasonably can be standardized for each central office, such as those for power, environmental conditioning, and use of riser and conduit space. If different interconnectors use different amounts of space, desire arrangements that require different amounts of time and materials to construct, or have different preferences regarding installation, maintenance, and repair by LEC personnel, total charges will differ accordingly, but the unit charges should be uniform in each central office.

159. On the other hand, it appears that the rates, terms, and conditions for the use of different types of central office electronic equipment dedicated to interconnectors under virtual collocation are best tailored to reflect individual circumstances. For example, interconnectors may wish to use different types of central office equipment with significantly differing costs, or LECs and interconnectors may negotiate different financial arrangements.[357] We will allow the LECs and inter-

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355 While the terms and conditions for expanded interconnection offerings may differ, they must be generally available.

356 Labor and materials charges may include appropriate overhead loadings. Labor rates may also differ by type of personnel or by time of day.

357 For example, in some instances, the interconnector and the LEC may agree that the LEC will purchase interconnector central office equipment from third-party vendors and recover these costs from interconnectors through connection charges. In other situations, they may agree that the LEC will

connectors to negotiate the rates, terms, and conditions of such connection charge subelements, but will require the LECs to file those rates, terms, and conditions, which must then be made available to all similarly situated interconnectors under tariff.[358] We expect LECs and interconnectors to cooperate in developing the terms and conditions of interconnection arrangements within the guidelines we establish in this Order.[359]

160. Tariffing of Central Office Space Usage. We believe that the public interest requires tariffing of LEC central office space usage under physical collocation in order to prevent anticompetitive or discriminatory pricing.[360] Absent tariff regulation by the Commission, LECs could undermine the viability of expanded interconnection by over-charging interconnectors for floor space, power, and environmental conditioning. With today's fiber optic and microwave technology, electronic equipment collocated

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purchase or lease this equipment from the interconnector, with tariffed charges paid by the interconnector based on the purchase or lease price.

358 See Sea-Land Service, Inc. v. ICC, 738 F.2d 1311 (D.C. Cir. 1984) (individually negotiated rates are not per se unreasonably discriminatory, in violation of Interstate Commerce Act, if tariffs embodying contract rates are filed and are generally available to others similarly situated); MCI Telecommunications Corp. v. FCC, 917 F.2d 30, 38 (D.C. Cir. 1990) (same principle applies under Communications Act). See also Maislin Indus., U.S. v. Primary Steel, Inc., 110 S. Ct. 2759 (1990).

359 If the LECs and interconnectors are unable to reach agreement on all interconnection provisions, the LECs will be required to file expanded interconnection tariffs in accordance with the schedule established herein. See infra ¶¶ 259-63. Of course, this does not prevent the negotiation of expanded interconnection arrangements after the filing of the initial tariffs.

360 The New York Public Service Commission, in its order approving New York Telephone's physical collocation offering, required that the space usage rates and conditions established for each central office be filed as an attachment to the tariff and be made available to other interconnectors, and reserved the authority to regulate central office space offerings through the formal tariff process if necessary. Order Regarding OTIS II Compliance Filing, Cases 29469 and 88-C-004 (N.Y. PSC May 8, 1991), slip op., Analysis at 43-44. The Massachusetts Department of Public Utilities concluded that it has jurisdiction over physical collocation space, which is ancillary to the provision of telecommunications service, and ordered that the charges for such space be tariffed. Complaint of Teleport Communications-Boston Seeking the Provision of Certain Interconnection Arrangements from the New England Tel. and Tel. Co., D.P.U. 90-206, D.P.U. 91-66, at 27-30 (Mass. Dept. Pub. Util. July 31, 1991).

in the LEC central office is necessary to provide interconnected circuits.[361] Therefore, the use of LEC central office space is an essential element of physical collocation for which competitive alternatives are not available. Absent tariff oversight, the LEC could seriously undermine the utility of physical collocation through the terms and conditions for central office space usage.

161. We conclude that we have statutory authority to impose such a requirement in the present circumstances. Title II of the Communications Act gives the Commission specific regulatory authority over common carriers engaged in the provision of interstate or foreign communications service.[362] Our authority to require LECs to tariff, pursuant to Title II, central office space for physically collocated expanded interconnection is thus dependent on whether such a service is both a "communications service" and provided on a "common carrier" basis. We conclude that central office space for physical collocation satisfies both criteria.

162. First, central office space for physical collocation is a communications service. The Act defines communications to include: "all instrumentalities, facilities, apparatus, and services (among other things, the receipt, forwarding, and delivery . . .) incidental to" communications.[363] We conclude that central office space for physical collocation is an "incidental" service and thus falls within the statutory definition of communications.[364] The Commission has held offerings to be "incidental" to communications, and therefore communications services themselves, if they are

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361 To cross-connect a CAP's (or other party's) high capacity circuits to a LEC's distribution frame, the CAP's electronic circuit terminating equipment must be in the same building as the LEC distribution frame. See MFS Comments at 48-49 & n.69 (technological standards applying to cross-connects essentially require that equipment be in same building).

362 47 U.S.C. §§ 201-226.

363 47 U.S.C. § 153(a).

364 The legislative history manifests a Congressional intent that the "incidental to" language in the Act be interpreted broadly. See Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), Tentative Decision, 72 FCC 2d 358, 414-16 & nn.84-89 (1979). More specifically, the "incidental to" language in the Communications Act stems from the 1906 Hepburn Amendment to the Interstate Commerce Act of 1887, 34 Stat. 584, originally codified at 49 U.S.C. § 1(3)(a), partially revised and currently codified at 49 U.S.C. § 10102(26). In that amendment, Congress authorized the Interstate Commerce Commission to assert jurisdiction over such railroad activities as the leasing of railroad cars, trackage, and other facilities by expanding the definition of "transportation" to include "all instrumentalities and facilities of shipment or carriage . . . and all services in connection with the receipt, delivery, . . . storage and handling of property transported." 49 U.S.C. § 1(3)(a).